

In the Matter of THE TOLEDO STEEL TUBE COMPANY and INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, #12

Case No. R-628.—Decided October 3, 1939

Metal Products Manufacturing Industry—Labor Organizations Involved: recognition of split in parent labor organization; two groups constituting separate labor organizations affiliated with C. I. O. and A. F. L.—*Investigation of Representatives:* controversy concerning representation of employees; dispute between craft and industrial unions as to appropriate unit; refusal of Company to recognize industrial or craft union as exclusive bargaining agents until question of representation settled—*Contracts:* of craft union subject to determination of appropriate unit; of industrial union no bar to investigation due to provision for modification and amendment coupled with fact that it was executed by petitioning union—*Unit Appropriate for Collective Bargaining:* dependent on desire of employees involved where considerations determinative of appropriate unit are such that either of two contentions is valid; determination of dependent upon results of elections—*Elections Ordered:* both A. F. L.-U. A. W. and C. I. O.-U. A. W. to be placed on ballot unless Regional Director notified of desire not to be represented thereon.

Mr. Harry L. Lodish and Mr. Bernard Bralove, for the Board.

Mr. C. E. Kiker, Mr. Edward Lamb, and Mr. Lowell Goerlich, of Toledo, Ohio, for Local No. 12.

Mr. J. W. Starritt, of Toledo, Ohio, for the M. E. S. A.

Mr. Raymond J. Compton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On September 25, 1937, International Union, United Automobile Workers of America, #12, herein called Local No. 12, filed with the Regional Director of the Eighth Region (Cleveland, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of The Toledo Steel Tube Company, Toledo, Ohio, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On January 12, 1938, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules

15 N. L. R. B., No. 95.

and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On February 17, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon Local No. 12, and upon the Mechanics Educational Society of America, Local No. 4, herein called the M. E. S. A., a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice a hearing was held on March 8, 1938, at Toledo, Ohio, before Harlow Hurley, the Trial Examiner duly designated by the Board. On July 14, 1939, the Regional Director issued notice of further hearing for the purpose of introducing additional evidence into the record. Copies of the notice were duly served upon the aforementioned parties. Pursuant to the notice a further hearing was held on July 24 and 25, 1939, at Toledo, Ohio, before Earl S. Bellman, the Trial Examiner duly designated by the Board. The Board, Local No. 12, and the M. E. S. A. were represented by counsel and participated in both hearings. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearings the Trial Examiners made several rulings on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiners and finds that no prejudicial errors were committed. The rulings are hereby affirmed. Pursuant to permission granted by the Board, Local No. 12 and the M. E. S. A. submitted briefs which the Board has considered.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is an Ohio corporation having its office and principal place of business in Toledo, Ohio. It is engaged in the manufacture and sale of electric welded steel tubing, the principal raw materials used including hot and cold rolled stripped steel, carbide, and oxygen. In 1937 the Company expended approximately \$420,000 for the purchase of raw materials, 70 per cent of which were shipped to it from points outside the State of Ohio. During the same period, sales of the finished product totaled \$1,115,402, and 93 per cent of such product was shipped outside the State of Ohio. The Company normally has a personnel of approximately 200 employees.

II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile Workers of America, #12, is a labor organization which at the time it filed its petition was

affiliated with the Committee for Industrial Organization.¹ It admits to membership all the employees of the Company, excluding clerical and supervisory employees, and its membership also includes employees of a number of other employers in Toledo, Ohio. The split occurring early in 1939 within the membership of the International Union, United Automobile Workers of America, of which No. 12 is a local, has been recognized by the Board as establishing two separate labor organizations: one affiliated with the Congress of Industrial Organizations, herein called the C. I. O.-U. A. W.; and the other affiliated with the American Federation of Labor, herein called the A. F. L.-U. A. W.² However, the record in the present proceeding fails to show that prior to the second hearing any affirmative action with reference to this controversy was taken by Local No. 12. Consequently, we are unable definitely to determine whether Local No. 12 has reaffirmed its affiliation with the Congress of Industrial Organizations, or whether it has become affiliated with the American Federation of Labor.

Mechanics Educational Society of America, Local No. 4, is an unaffiliated labor organization, admitting to membership all the employees in the toolroom of the Company, excluding supervisory employees.

III. THE QUESTION CONCERNING REPRESENTATION

The controversy herein is over the representation of the employees in the toolroom, which department is composed of skilled tool and die makers. Local No. 12 claims that all the employees of the Company, excluding clerical and supervisory employees, constitute an appropriate bargaining unit. The M. E. S. A. contends that the employees in the toolroom constitute a separate bargaining unit.

On February 6, 1935, Local No. 12 entered into a written contract with the Company covering "employees" and according "recognition" of Local No. 12. The contract did not set forth specifically what employees of the Company were covered by its provisions, nor did it define the scope of the recognition accorded Local No. 12. Until 1937 the constitution of Local No. 12 expressly excluded tool and die makers from its jurisdiction. Despite this constitutional prohibition, however, five of the tool and die employees were permitted to become members of Local No. 12 in 1936. These subsequently withdrew their membership. Up to the time of the hearing,

¹ Now Congress of Industrial Organizations.

² See *Matter of Chrysler Corporation and United Automobile Workers of America, Local 571, affiliated with C. I. O.*, 13 N. L. R. B. 1308; *Matter of Briggs Manufacturing Company and Briggs Indiana Corporation and International Union, United Automobile Workers of America, affiliated with the C. I. O.*, and *Locals No. 212 and No. 265, International Union, United Automobile Workers of America affiliated with the C. I. O.*, 13 N. L. R. B. 1326; *Matter of Motor Products Corporation and Local 293, International Union, United Automobile Workers of America, affiliated with the C. I. O.*, 13 N. L. R. B. 1320.

Local No. 12 had operated under its 1935 contract and had secured blanket wage increases from 1934 to 1937 covering all employees, including the tool and die makers. The 1935 contract provided that it was subject to modification or amendment at any time after August 1, 1935.

In 1937 dissatisfaction with the delay in and insufficiency of wage increases, and the alleged lack of representation by Local No. 12 with respect to their particular needs, led the tool and die employees successfully to petition the M. E. S. A. for membership. The same year both Local No. 12 and the M. E. S. A. presented a written contract to the Company covering the respective units they claimed to represent. The Company refused to sign either contract until the National Labor Relations Board determined the question as to which unit was appropriate for the purposes of collective bargaining. However, on May 16, 1939, the Company signed a contract with the M. E. S. A. covering the tool and die employees. This agreement specifically provided that it was to remain in effect until such time as the Board issued a decision conflicting therewith. At the time of the second hearing, Local No. 12 also was completing its negotiations for a new contract which similarly provided that recognition as the exclusive bargaining agency of all the employees of the Company would be subject to the decision of the Board in the present proceeding. The Company had made and makes no objection to entering into an agreement with either or both Local No. 12 or the M. E. S. A.

We have noted above that the contract of February 6, 1935, between the Company and Local No. 12 is subject to modification or amendment at any time after August 1, 1935, and that Local No. 12 is the petitioner herein. The contract is, therefore, no bar to an investigation or certification of representatives by the Board. The M. E. S. A. contract, as noted above, is subject to determination by the Board of the appropriate unit and hence constitutes no bar to any investigation or certification of representatives.

We find that a question has arisen concerning representation of the employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

As stated above, Local No. 12 alleges that all the employees of the Company, excluding clerical and supervisory employees, constitute an appropriate bargaining unit, whereas the M. E. S. A. contends that the tool and die makers employed in the toolroom constitute a separate and distinct unit.

In support of its contention, the M. E. S. A. introduced evidence showing that the tool and die makers are a well-established craft, that because of their required skill there is no interchangeability of personnel between the toolroom and the production division of the plant, and that the toolroom is separate and apart from the other production units. On the other hand, as stated hereinbefore, Local No. 12 secured plant-wide wage increases over a period of years, the benefits of which were received by the tool and die employees, and at one time included within its membership approximately half the employees of the toolroom.

Under all the circumstances it appears that the tool and die makers might appropriately either be included within the single industrial unit claimed by Local No. 12, or they might function as a separate bargaining unit. Under similar circumstances, the Board has held the desires of the employees themselves to be determinative.³

At the hearing, the M. E. S. A. introduced in evidence petitions signed by all the tool and die makers attesting their membership in the M. E. S. A. and requesting that the Board certify the M. E. S. A. as their bargaining representative. Local No. 12 introduced considerable evidence in support of its claim that a majority of the employees in an industrial unit had designated it as their collective bargaining representative. We believe, however, that the policies of the Act will best be effectuated and the desires of the various employees can best be determined by the holding of elections by secret ballot.⁴

As we have noted above, two separate labor organizations, the C. I. O.-U. A. W. and the A. F. L.-U. A. W., have resulted from the split occurring early in 1939 within the membership of the International Union, United Automobile Workers of America, and the present record is silent as to whether Local No. 12 has reaffirmed its affiliation with the Congress of Industrial Organizations or has become affiliated with the American Federation of Labor.

³ See *Matter of The Globe Machine and Stamping Company and Metal Polishers Union*, Local No. 3, *International Association of Machinists*, District No. 54, *Federal Labor Union* 18788, and *United Automobile Workers of America*, 3 N. L. R. B. 294, and subsequent cases.

⁴ See *Matter of The Cudahy Packing Company and United Packinghouse Workers of America*, Local No. 21, of the *Packinghouse Workers Organizing Committee*, etc., 13 N. L. R. B. 526; and *Matter of Armour & Company and United Packinghouse Workers*, Local *Industrial Union No. 13 of Packinghouse Workers Organizing Committee*, etc., 13 N. L. R. B. 567.

Under the circumstances, we will order elections among the employees within the groups described below who were employed by the Company during the pay-roll period next preceding the date of the Direction of Election herein,⁵ including employees who did not work during such pay-roll period because they were ill or on vacation and employees who were then or have since been temporarily laid off, but excluding those who have since quit or been discharged for cause:

(a) The tool and die makers to determine whether they desire to be represented by the M. E. S. A., the C. I. O.-U. A. W., the A. F. L.-U. A. W., for the purposes of collective bargaining, or by none of the three labor organizations;

(b) All the remaining employees of the Company, excluding clerical and supervisory employees, to determine whether they desire to be represented by the C. I. O.-U. A. W. or the A. F. L.-U. A. W., for the purposes of collective bargaining, or by neither.

There shall be no final determination of the appropriate unit or units pending the outcome of the elections. If a majority of the employees in one group designate one labor organization as bargaining representative and a majority of the employees in the other group designate a second labor organization as bargaining representative or select no bargaining representative, the employees in each said group designating a bargaining representative shall constitute, respectively, a separate bargaining unit. If a majority of the employees in each of the two groups designate the same labor organization as bargaining representative, that labor organization shall be certified as the exclusive bargaining representative of all the employees in the two groups.

Since there may be some question as to whether the labor organization with which Local No. 12 is not affiliated will desire to participate in the elections herein ordered, we shall withdraw from the ballots the name of any labor organization which within 5 days after receipt of notice of the Direction of Election notifies the Regional Director for the Eighth Region that it desires such withdrawal.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSION OF LAW

A question affecting commerce has arisen concerning the representation of employees of The Toledo Steel Tube Company, Toledo,

⁵ The parties at the hearing stipulated that in the event an election was directed by the Board eligibility to vote should be determined by employment as indicated by the pay roll of July 21, 1939. We conclude, however, that adoption of a current pay-roll period will be more appropriate in the instant case.

Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, it is hereby

DIRECTED that, as part of the investigation ordered by the Board to ascertain representatives for collective bargaining with The Toledo Steel Tube Company, Toledo, Ohio, elections by secret ballot shall be conducted within twenty-five (25) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the employees within the groups described below who were employed by the Company during the pay-roll period next preceding this Direction of Election, including employees who did not work during such pay-roll period because they were ill or on vacation and employees who were then or have since been temporarily laid off, but excluding those who have since quit or been discharged for cause:

(a) The tool and die makers to determine whether they desire to be represented by the Mechanics Educational Society of America, Local No. 4, by International Union, United Automobile Workers of America, affiliated with the Congress of Industrial Organizations, by International Union, United Automobile Workers of America, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by none of the three labor organizations;

(b) Among all the remaining employees of the Company, excluding clerical and supervisory employees, to determine whether they desire to be represented by International Union, United Automobile Workers of America, affiliated with the Congress of Industrial Organizations, or by International Union, United Automobile Workers of America, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

MR. WILLIAM M. LEISERSON, concurring in part and dissenting in part:

I do not think it is necessary to postpone final determination of the appropriate unit pending the outcome of the election. The evidence in this case requires a finding that the tool and die makers constitute an appropriate unit and that they must therefore be voted separately from the rest of the employees. No so-called industrial

unit including tool and die makers has been established by custom, practice, or contract between duly designated representatives of the employees and the employer.

If, as Local No. 12 contends, it was operating in 1937 as the representative of the tool and die makers, as well as the other employees in a single unit, then of course its petition, which originated the present case, could not be entertained by the Board. The petition would have to be dismissed on the ground that the petitioner already was the duly designated and recognized representative under the current contract, and it could not raise a question disputing its own representation. The petition in the case can be considered by the Board only because by filing the petition Local No. 12 recognized the fact that its claim to represent the tool and die makers was questionable.

A dispute as to representation was thus created, and in my judgment the dispute can best be settled by an election.

MR. EDWIN S. SMITH, dissenting in part and concurring in part:

I see no warrant in granting the craft group the privilege of splitting themselves from the industrial unit in this case. There has been a plant-wide contract between Local No. 12 and the Company since 1935, and the tool and die makers have benefited, along with the other employees, from the blanket wage increases secured by Local No. 12 during this period. I think the reasoning in my dissents in the *Allis-Chalmers*⁶ and subsequent cases is here applicable.

I cannot agree with the reasoning of the concurring opinion that if Local No. 12 was operating in 1937 as representative of the tool and die makers, then its petition for certification could not be entertained by the Board. At that time the M. E. S. A. was claiming to represent a majority of the tool and die makers and had presented a written contract to the Company covering the employees in that unit. Further, the contract with Local No. 12 had been in existence since 1935 and Local No. 12 itself requested the Company to sign another contract covering the broader unit. Faced with these conflicting claims the Company refused to execute either contract. Under these circumstances I think it plain that a question concerning representation had arisen and that Local No. 12, while claiming to represent all the employees, could properly petition for a determination of the question by this Board.

If, however, a single bargaining unit including the tool and die makers is not found appropriate, as the majority holds, I agree with

⁶ *Matter of Allis-Chalmers Manufacturing Company and International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159, 175.

Chairman Madden's opinion that final determination of the bargaining unit should await the outcome of the separate election for the tool and die makers.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

October 11, 1939

On October 3, 1939, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled proceeding. The Direction of Election provided that the Board would withdraw from the ballots the name of any labor organization involved therein which within 5 days after receipt of notice of the Direction of Election notified the Regional Director for the Eighth Region that it desired such withdrawal.

The Board, having been advised by the Regional Director that International Union, United Automobile Workers of America, affiliated with the American Federation of Labor, has advised of its desire to have its name withdrawn from the ballots, hereby amends its Direction of Election issued on October 3, 1939, by striking from Section (a) thereof the words "by International Union, United Automobile Workers of America, affiliated with the Congress of Industrial Organizations, by International Union, United Automobile Workers of America, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by none of the three labor organizations," and substituting therefor "or by International Union, United Automobile Workers of America, affiliated with the Congress of Industrial Organizations, or by neither"; and by striking from Section (b) thereof the words "they desire to be represented by International Union, United Automobile Workers of America, affiliated with the Congress of Industrial Organizations, or by International Union, United Automobile Workers of America, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither" and substituting therefor "or not they desire to be represented by International Union, United Automobile Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining."